IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1924 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5: No

GSRTC

Versus

HANSABEN WD/O DECD. HASMUKHBHAI P CHANDVANIA

Appearance:
MRS VASAVDATTA BHATT for appellant
MR SUNIL B PARIKH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 16/09/1999

ORAL JUDGEMENT

1. Learned advocate for the appellant seeks permission to delete name of respondent No.5 from the appeal as presence of respondent No.5 is not necessary for the purpose of deciding issue involved in the appeal. Permission as prayed for is granted. Name of respondent No.5 stands deleted from the appeal. It may be stated that, though respondents Nos. 3 and 4 were impleaded as parties, they expired during pendency of the claim petition and, hence, their names were deleted from the

claim petition.

2. Admitted. Learned advocate Mr. Sunil Parikh waives service of notice on behalf of respondents Nos.1 and 2. Having regard to the facts of the case and in view of the joint request made by learned advocates for the parties, the appeal is taken up for hearing today.

3. By means of filing this appeal under Section 173 of the Motor Vehicles Act, 1988, appellant i.e Gujarat State Road Transport Corporation has challenged legality of judgment and award dated August 29, 1998 rendered by the Motor Accidents Claims Tribunal (Aux.), Rajkot, in Motor Accident Claim Petition No.192 of 1992, by which, the appellant as well as respondent No.5, whose name stands deleted, are directed to pay a sum of Rs.4,04,000/- as compensation to respondents Nos. 1 and 2 with proportionate costs and interest at the rate of 15% per annum from the date of claim petition till its realisation.

4. The accident in question took place on March 12, 1992. Deceased Hasmukhbhai was driving his motor-cycle bearing Registration No.GCI 3095 and was proceeding from Rajkot to Gondal. At the place where the accident took place, respondent No.5, whose name is deleted from the appeal, came driving S.T. Bus bearing Registration No. GJ-1-Z-641 in rash and negligent manner, and, as respondent No.5 was driving the bus at an excessive speed, he dashed the bus with the motor-cycle, as a result of which Hasmukhbhai who was driving the motor-cycle sustained serious injuries and succumbed to the injuries on the spot. It may be stated that one Dilipbhai Pragjibhai, who was pillion rider, also sustained serious injuries in the said accident and died on the spot. According to the dependents of deceased Hasmukhbhai, the accident had taken place because of rash and negligent driving of the bus by respondent No.5. The dependents' case was that the deceased was doing carpentry work and was earning Rs.3,000/- per month and because of his sudden death, they had suffered monetary loss. Under the circumstances, they instituted M.A.C.Petition No.192 of 1992 before the Motor Accidents Claims Tribunal (Aux.), Rajkot, and claimed compensation of Rs.4,50,000/-. Though the driver of the bus was duly served, he did not file written statement controverting the averments made in the claim petition. The present appellant contested the claim petition by filing written statement at Exh.12 contending inter alia that the driver of the bus was not negligent at all and, therefore, the claim petition was liable to be dismissed.

It was also disputed in the written statement that income of the deceased was not Rs.3000/per month and, therefore, the claimants were not entitled to compensation as claimed in the claim petition. Upon rival assertions of the parties, necessary issues for determination were raised by the Tribunal at Exh.16. In support of the claim advanced in the claim petition, respondent No.1 examined herself at Exh.27. During the course of her deposition, she produced copy of first information report lodged with reference to the accident at Exh.18, copy of panchanama of place of occurrence at Exh.19, copy of post-mortem notes at Exh.29, copy of birth certificate of the deceased at Exh.22, copy of newspaper cutting in which photograph of the vehicles involved in the accident was published at Exh.24, etc. After taking into consideration the contents of first information report, panchanama of place of occurrence, and photograph which was published in the newspaper, the Tribunal held that respondent No.5 was rash and negligent in driving the bus and, because of his negligence, the accident in question had taken place. Thereafter, the Tribunal proceeded to determine amount of compensation on the basis of evidence led by respondent No.1 regarding income of the deceased. After taking into consideration the evidence, the Tribunal deduced that income of the deceased was Rs.3,000/- per month. It was found that the age of deceased at the time of accident was 28 years and, therefore, the Tribunal concluded that multiplier of 16 should be applied to the facts of the present case. After deducting 1/3rd amount, which would have been spent by the deceased for himself had he been alive, the Tribunal held that the dependents were entitled to a sum of Rs.3,84,000/- as dependency benefits. The Tribunal also awarded Rs.10,000/- under the head of conventional amount as well as for funeral ceremony expenses. Moreover, the Tribunal awarded a sum of Rs.10,000/- under the head of loss of consortium. In the ultimate analysis, the Tribunal awarded Rs.4,04,000/- to respondents Nos. 1 and 2 as compensation with proportionate costs and interest at the rate of 15% per annum from the date of application till realisation by the impugned award, giving rise to the present appeal.

5. Mrs. Vasavdatta Bhatt, learned advocate for the appellant, submitted that no cogent evidence was led by the claimants to establish that they were entitled to compensation of Rs.4,04,000/- and, therefore, the impugned award should be set aside. It was pleaded that the accident had occurred due to contributory negligence of the deceased also and, therefore, the finding recorded by the Tribunal to the effect that the driver of the bus

was solely responsible for the accident in question should be set aside. It was claimed that no evidence was led by the claimants to prove that income of the deceased at the relevant time was Rs.3000/- per month and, therefore, the Tribunal ought not to have worked out compensation on that basis. What was stressed was that, having regard to the facts of the case, the Tribunal should not have adopted multiplier of 16 for the purpose of finding out dependency benefit and, therefore, the appeal should be allowed. In the alternative, it was pleaded that the Tribunal was not justified in awarding 15% interest per annum on the amount of compensation and, therefore, the award should be suitably modified.

6. Mr. Sunil Parikh, learned advocate appearing for the claimants, submitted that, in view of the contents of the first information report, as well as panchanama of place of occurrence, the Tribunal was justified in concluding that the bus driver was solely negligent and, therefore, the finding recorded by the Tribunal on the point of negligence should not be disturbed by the Court in this appeal. Learned advocate for the claimants further submitted that the original claimants had produced certificates issued by Meera Builders at Exh.26, Premal Enterprises at Exh.27 and Hira Land Developers at Exh.28 to establish that the deceased was a good carpenter and was earning substantial amount, and, therefore, the finding recorded by the Tribunal that income of the deceased was Rs.3000/- per month being just should be upheld by the Court in this appeal. What was stressed was that a just award has been passed by the Tribunal and, therefore, the appeal, which has no merits, should be dismissed.

7. We have heard learned advocates for the parties. We have also taken into consideration relevant documents which were produced by learned advocates for the parties for our perusal before deciding the present appeal. The submission that the bus driver was not negligent has no substance and cannot be accepted. The contents of first information report and the panchanama establish that the accident had taken place only because of negligence on the part of the bus driver. The record does not indicate in any manner that the negligence of the deceased had contributed in any manner to the accident in question at all. In view of the impact which the bus had with the motor-cycle and the damage caused to the motor-cycle, as is noticed in the panchanama, it is not difficult to conclude that the bus driver was negligent for the accident in question. The finding recorded by the Tribunal on the point of 'negligence' being just and

proper, is hereby upheld.

8. So far as the income of the deceased is concerned, the Tribunal, before deducing that the income of the deceased was Rs.3000/- per month, has relied upon certificates issued Meera Builders, Premal Enterprises and Hira Land Developers. Those certificates, which have been produced at Exh.26, Exh.27 and Exh.28, would indicate that the deceased was expert in carpentry work, and must be earning a substantial amount. On the totality of the facts and circumstances of the case, it cannot be said that the finding recorded by the Tribunal to the effect that the income of the deceased was Rs.3000/- per month is vitiated in any manner. In order to determine the dependency benefit, the Tribunal has deducted 1/3rd amount from the monthly income of the deceased which would have been spent by the deceased for himself had he been alive, and has come to the conclusion that the dependency benefits available to the claimants was Rs.2000/- per month. This finding also, in our view, cannot be said to be erroneous at all. In view of the birth certificate of the deceased, which was produced at Exh.22, the Tribunal was justified in concluding that the age of the deceased at the time of the accident was 28 years. Though the Tribunal held that it was proper to apply multiplier of 18 to the facts of the case, in the ultimate result, the Tribunal has applied multiplier of 16 for the purpose of determining the dependency benefit. Learned counsel for the appellant has failed to point out to the Court as to how application of multiplier of 16 to the facts of the present case is erroneous. Under the circumstances, we are of the opinion that determination of the dependency benefit is perfectly in consonance with principles laid down from time to time by the Supreme Court as well as by the High Court, and cannot be interfered with in the present appeal. So also award of the amount of compensation under the head of 'conventional amount' or 'loss of consortium' cannot be said to be illegal at all. Therefore, we find that the decision of the Tribunal that the claimants are entitled to compensation of Rs.4,04,000/- is eminently just and is hereby confirmed.

9. However, in the operative part of the award, direction has been given by the Tribunal that the appellant and respondent No.5 shall pay amount of compensation with proportionate costs and interest at the rate of 15% per annum from the date of claim petition till realisation.

10. Learned advocate for the appellant pleaded that,

in view of the decision of the Supreme Court rendered in the case of United India Insurance Company Limited vs. M.K.J. Corporation, reported in III (1996) CPJ 8 (SC), the Tribunal could not have awarded compensation with interest at the rate of 15% per annum from the date of the application till realisation and, therefore, the impugned award to that extent requires to be modified suitably. In United India Insurance Company Limited (supra), the Supreme Court has ruled as under:

"The next question is: what rate of interest the insured-respondent is entitled to get ? In common parlance, when the insured-respondent is deprived of right to enjoy his money or invest the money in business, necessarily the loss has to be compensated by way of payment of interest by the Insurance Company. We are informed that as per the directions of the Government of India the appellant-Insurance Company has no option but to invest the money in the securities specified by the Government of India under which the Insurance Company is securing interest on investment at the rate of 11.3% per annum. Under these circumstances, the appellant-Insurance Company is liable to pay interest 12% per annum from January 1, 1991 till date of payment. It is then contended that as per the policy, the respondent is entitled to consequential loss as per the independent policy. The Commission no doubt did not give any independent reason for the same but all the claims were heard and disposed of together. Under these circumstances, we are of the view that the claims must be deemed to have been rejected."

In view of the authoritative pronouncement of law by the Supreme Court, we are of the opinion that the Tribunal was not justified in directing the appellant to pay compensation to respondents Nos.1 and 2 with interest at the rate of 15% per annum from the date of the application till realisation, and that part of the impugned award deserves to be modified by directing the appellant to pay amount of compensation to respondents Nos. 1 and 2 with interest at the rate of 12% per annum from the date of the application till realisation.

11. For the foregoing reasons, the appeal partly succeeds. It is held that respondents Nos. 1 and 2 are entitled to compensation of Rs.4,04,000/- with interest at the rate of 12% per annum from the date of the application till realisation. Rest of the directions given in the impugned award are not interfered with at all and are hereby upheld. The judgment and award dated

August 29, 1998 rendered by the Motor Accidents Claims Tribunal (Aux.), Rajkot, in Motor Accident Claim Petition No.192 of 1992, stands modified to the extent indicated above. There shall be no order as to costs. It is hoped that the amount payable as compensation to respondent Nos. 1 and 2 shall be deposited by the appellant as early as possible and without any unavoidable delay.

****

(swamy)